



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Brian Lavallee
2 Phoenix Dr.
Kingston, NH 03848

Re: Wetlands Bureau
File # 2001-1299

**ADMINISTRATIVE ORDER
BY CONSENT
No. WD 04-14**

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Water Division, to and with the consent of Brian Lavallee, pursuant to RSA 482-A:6. This Administrative Order by Consent is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. Brian Lavallee is an individual having a mailing address of 2 Phoenix Drive, Kingston, New Hampshire 03848.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. Brian Lavallee is the owner of real property located at 2 Phoenix Drive in Kingston, NH, more specifically referenced on Kingston Tax Map R25, as Lot 5D (the "Property").
4. On August 22, 2001, DES personnel inspected the Property and observed that approximately 20,000 sq. ft. of forested wetland had been cleared, stumped, and filled.
5. A review of DES records showed that as of the inspection, DES had not received an

application for, and had not issued a permit for, any activities affecting the wetlands on the Property.

6. On October 26, 2001, DES issued Letter of Deficiency No. WET 2001-78 (the "LOD") to Brian Lavallee notifying him of the wetland impacts observed during the inspection, requesting him to retain a wetland scientist within 10 days of receipt of the LOD, and requesting him to submit a restoration plan for the impacted wetlands to DES within 30 days of receipt of the LOD.

7. On December 6, 2001, Brian Lavallee contacted DES and requested to review examples of restoration plans.

8. On December 7, 2001, DES telephoned Brian Lavallee and left messages at his home and workplace.

9. On January 28, 2002, DES personnel sent a letter to Brian Lavallee detailing the requirements for restoration plans and informing him that the plan could be hand-written as long as detailed measurements and supplemental information were included. The letter provided Mr. Lavallee with the phone number and website for obtaining a list of certified wetland scientists in New Hampshire and included a selection of sample restoration plans.

10. On June 25, 2002, DES personnel inspected the Property a second time. DES personnel observed that the disturbed area had not been restored. DES personnel met with Brian Lavallee during the inspection. Mr. Lavallee informed DES personnel that he had contacted Jim Gove, C.W.S. with Gove Environmental Services, but had not retained Mr. Gove to assist with the restoration. Additionally, Brian Lavallee requested information from DES personnel about constructing a pond in the area as part of the restoration. DES personnel advised Brian Lavallee that he would need to submit an application to the DES Wetlands Bureau for a permit to create a pond in a wetland as part of an overall restoration.

11. On July 8, 2002, DES sent Brian Lavallee a letter detailing the requirements that he would need to address in the permit application for a pond, and advising him that he should retain a certified wetland scientist to assist with the restoration process. In the letter, DES proposed a deadline of August 15, 2002 for completion of a restoration plan, or a deadline of September 1, 2002 for completion of a restoration plan including a pond.

12. As of September 1, 2002, DES had not received the restoration plan and permit application.

13. On May 27, 2003, DES received a Standard Dredge and Fill Application and accompanying plans dated December, 2002, prepared by Rockingham County Conservation District (the "Plan") from Brian Lavallee, which proposed the removal of 12,627 square feet of unpermitted fill as part of a plan to construct a wildlife pond.

14. The Plan indicated a total impact of 12,627 square feet to wetlands and did not account for

the full extent of the unpermitted impacts to wetlands identified by DES personnel on August 22, 2001. A restoration plan was not submitted.

15. On May 30, 2003, DES sent an Acknowledgment of Receipt of the Wetlands Application to Brian Lavallee.

16. On August 11, 2003, DES sent a Request for More Information to Brian Lavallee. The letter requested clarification of the type and amount of impacts on the Property and made recommendations for construction sequencing. The relevant items and recommendations included:

- a. A request for a plan depicting the extent of impact to the wetland areas, in square feet, that have been dredged (i.e., stumped) and the wetland areas that had been dredged and filled;
- b. A request for a restoration plan for the area that was cut and stumped without a permit not targeted for pond construction by September 15, 2003;
- c. A request for a narrative construction sequence, including erosion and sedimentation controls, and a timeline for completion of restoration activities;
- d. A request for a list of shrub species identified by type, quantity and planting location;
- e. A recommendation that the project be conducted in a phased approach that differentiates between the restoration of previously clear-cut and stumped forested wetlands (Phase 1) and construction of the proposed pond (Phase 2);
- f. A recommendation that Phase 1 be completed by October 15, 2003; and
- g. A request for copies of abutter notification receipts;

17. On October 6, 2003, Brian Lavallee indicated in a telephone conversation with DES personnel that he had asked Gove Environmental Services and Rockingham County Conservation District to address the issues in DES's August 11, 2003 letter.

18. On October 14, 2003, Brian Lavallee indicated in a telephone conversation with DES personnel that he did not think the requirements were needed and he could not afford to pay a certified wetland scientist for any further work on the plan.

19. On October 27, 2003, DES received an amended plan from Gove Environmental Services which included:

- a. A revised assessment of unpermitted impacts indicating that 15,300 square feet had been cleared and stumped, and 12,627 square feet had been cleared and filled;
- b. A proposed enhancement and restoration plan including plant species; and
- c. A construction sequence including erosion controls for the restoration area.

20. On October 28, 2003, DES received copies of abutter notification receipts from Grove Environmental Services.

D. DETERMINATION OF VIOLATIONS

1. Brian Lavallee has violated RSA 482-A:3 by dredging approximately 15,300 square feet in a wetland without a permit from DES.
2. Brian Lavallee has violated RSA 482-A:3 by dredging and filling 12,627 square feet of wetland without a permit from DES.

E. ORDER


Based on the above findings, DES hereby orders Brian Lavallee, and Brian Lavallee agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. **By September 30, 2004, restore 15,300 square feet of wetland** as submitted to DES on plans and in association with an After-the-Fact Standard Dredge and Fill Application prepared by Rockingham County Conservation District and Gove Environmental Services, Inc., received by DES on October 23, 2003, amended on October 27, 2003 and **as conditioned by DES Restoration Approval dated June 25, 2004.**
2. **By September 30, 2004, construct a wildlife pond as part of restoration of 12,627 square feet of impacted wetlands** as submitted to DES on plans and in association with an After-the-Fact Standard Dredge and Fill Application prepared by Rockingham County Conservation District and Gove Environmental Services, Inc., received by DES on October 23, 2003, amended on October 27, 2003 and **as conditioned by DES Restoration Approval dated June 25, 2004.**
3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Arlene Allen
DES Water Division
29 Hazen Drive
P.O. Box 95
Concord, NH 03302
Fax No.: (603) 271-6588
e-mail: aallen@des.state.nh.us

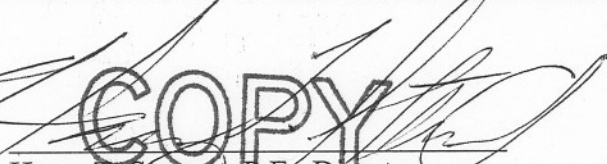
F. CONSENT AND WAIVER OF APPEAL

1. By signing this Administrative Order by Consent, Brian Lavallee agrees that this Order shall apply to and be binding on him, his heirs, successors, and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By signing this Administrative Order by Consent, Brian Lavallee waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Wetlands Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

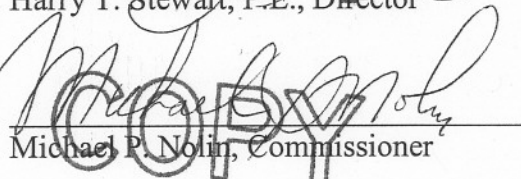

Brian Lavallee

7/8/04
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES


Harry T. Stewart, P.E., Director

7/15/04
Date


Michael P. Nolin, Commissioner

07 19 04
Date

cc: Gretchen Hamel, DES Legal Unit
Rene Pelletier, DES Land Resources Management Program
Public Information Officer, DES PIP Office
Mary Ann Tilton, Enforcement, DES Wetlands
Kingston Conservation Commission
Kingston Board of Selectmen

